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Message from the Chair

Dear Cyberspace Colleagues:

A big thank you to all the presenters at the Cyberspace Law Institute just wrapped up in Atlanta. Participants earned more than six hours of CLE as they enjoyed plenary sessions on topics ranging from brainspray to biometric privacy to ethical crises and more. They selected from roundtables and subcommittee meetings to discuss explore topics of interest. See the subcommittee reports below about projects developed at the meeting.

We are very grateful to Womble Bond Dickinson and Charles River Associates for their generous sponsorship, which made it possible for all to enjoy a welcoming reception at Womble’s offices, a fun and delicious Southern dinner at Mary Mac's Tea Room, and other opportunities to network. We enjoyed collaborating with Georgia Tech's Institute for Internet Security and Privacy and appreciate co-director Michael Farrell and professor Milton Mueller sharing insights from their research in attribution, cybersecurity, and internet governance.

If you missed the 2018 Cyberspace Law Institute, you can still access some of the material shared through the meeting webpage. And plan to join us at the Business Law Section Spring Meeting in Orlando on April 12-14. Early registration discount ends February 9. Read more below about the CLE programs our committee is sponsoring.

You should have received by now the Winter 2017-2018 issue of The Business Lawyer with our annual Survey of the Law of Cyberspace. Many thanks to editor John Rothchild and the 19 authors who contributed timely, well-researched articles. If you are interested in contributing to next year's issue, please contact John Rothchild.

With five book projects in the works, monthly contributions to Business Law Today and our Cyberspace newsletter, webinars, and CLE programs at BLS Spring and Annual Meetings, there are myriad ways for you to get involved with the committee's valuable work. We always welcome new contributors, so please reach out to the subcommittee chairs, vice-chair Cheryl Burtzel, or me with your ideas.

Regards,

Cheryl Dancey Balough

BLS Spring Meeting - April 12-14 - Orlando, Florida

Cyberspace Law Committee will again have a full day of committee and subcommittee meetings on Thursday, April 12. Please see the agenda here and join us. We also are sponsoring three CLE programs:

- Cyberinsurance: Coverage, Claims and Cross-Border Concerns (4/12, 2-3:30 pm)
- Legal Issues Arising from the Use of AI to Provide Financial Services (4/13, 10:30 am - noon)
What's Lurking Back There: Cybersecurity Risks in Legacy Systems (4/13, 2:30-4 pm)

Discounted early registration ends February 9, so register today. And plan to join us on Thursday evening for a casual, fun dinner with our colleagues in several other committees. More details will be available soon.

Subcommittee News

From the Robotics and Artificial Intelligence Subcommittee

The Robotics and AI subcommittee is seeking volunteers to help develop a presentation for the Business Law Section annual meeting in Austin in September. At our subcommittee meeting at the Cyberspace Law Institute, there was consensus for a program focusing on explaining to business lawyers artificial intelligence and its legal issues as they affect clients.

The panel would include an explanation of AI and what legal issues it presents (ownership of IP, privacy concerns, and liabilities). This would be accomplished via examples of AI in various industries such as health care, securities transactions, and transportation.

If you are interested in participating or contributing, please let co-chairs Richard C. Balough or Lisa Lifshitz know. The subcommittee will be conducting a telephone conference to firm up the proposal soon.

From the Cloud Computing and Enterprise Technology Subcommittee

Thanks to everyone who attended the Subcommittee meeting in Atlanta. We had a spirited discussion about the outline for a book, Enterprise Technology Directors Handbook. The suggestions for planning the contents to speak more effectively to the target audience were very helpful. We will follow up with subcommittee members on plans for the book. If you are interested in the project but were not able to join us in Atlanta, please email Candace Jones or Isvara Wilson so that we can add you to our distribution list.

From the Consumer Privacy and Data Analytics Subcommittee

At its meeting in Atlanta, the Subcommittee on Consumer Privacy and Data Analytics launched a project to create a checklist of legal issues that should be considered by organizations that are engaged with personal data and data analytics. Because personal data moves easily and frequently across national borders, the project will adopt an international perspective. We warmly invite the participation of other committee members. We are particularly in need of those with an interest in and/or expertise relating to the legal landscape in Asia, Latin America, or Eastern Europe, or an interest in data analytics generally. Let us know if you have any ideas about the direction the project should take or existing resources that it might draw upon.

From the Current Law Task Force

Current Law Task Force - Conference Call - 2/13/18

The Current Law Task Force tracks and reports on recent developments in cyberspace law and serves as an incubator for presentations and publications. The Task Force offers a variety of publication opportunities for Cyberspace committee members, including short-form updates.

The Task Force meets on a monthly basis to discuss emerging issues, and new members are always welcome. The next meeting of the Current Law Task Force will be held on Tuesday, February 13 at 10:30 am CT/11:30 am ET. The dial-in
information is below.

Call In: 312-667-9356
Conference ID: 079455
Security Pin: 160049

From the Healthcare IT Subcommittee

We had a productive meeting in Atlanta and are putting together the beginnings of a likely presentation for the fall meeting in Austin. The presentation will be geared towards entrepreneurs and their attorneys, highlighting the regulatory requirements for various health related technology. Stay tuned!

From the Cross-Border E-Commerce Subcommittee

A lineup of projects for 2018 and other activities of the Subcommittee were reviewed at the WWM (Winter Working Meeting) in Atlanta.

A revised UN draft was received just after the WWM of a proposed UNCITRAL checklist and guidance for cloud computing, data management, etc., including cross-border issues. A fast track was proposed (but not yet agreed to) for its interim approval this July.

Our first priority for February, therefore, will be to review and comment on the draft-starting with our next working conference call on Wednesday February 7, 1:15 pm EST. The subsequent conference call on this will follow on Wednesday February 21 at 1:00 EST.

A second phase will be to review the results of the Working Group IV (E-Commerce) meeting mid-April and quickly provide any drafting suggestions by early May. Conference calls will be set up as needed to meet these deadlines.

As a UN document, the checklist will be aimed at countries with different economic levels of development, differing underlying laws on E-Commerce and differing legal systems, which will need to be borne in mind.

We may want to segment the provisions between general contract issues including user rights and remedies, data management issues, jurisdiction and related issues, and matters like server locations and regulatory compliance (these latter type issues may turn out to be outside what ends up to be the scope of the document).

Also on the table will be any crossover issues with the UN E-Commerce Convention and draft ABA Resolution 109A (expected to be adopted at the upcoming ABA midyear meeting in February) on recommended E-Commerce provisions for trade and related agreements.

We will forward the new draft or the link (50 plus pages) to anyone requesting it, and links to related documents. Comments or drafting suggestions can be made on our conference calls or by email.

The Subcommittee in March will also start its annual review of actions at various international bodies to assess which if any should be engaged.

Cryptocurrency News

Steve Middlebrook, Womble Bond Dickinson

As usual, there’s lots of cryptocurrency news. Of particular importance to lawyers interested in this space, SEC Chairman Clayton and CFTC Chairman Giancarlo published a joint op-ed on cryptocurrency regulation in the Wall Street Journal.
Besides underscoring their commitment to enforcing the law in this area, the chairman expressed frustration with lawyers who are providing questionable legal advice to virtual currency businesses. "Market participants, including lawyers, trading venues and financial services firms, should be aware that we are disturbed by many examples of form being elevated over substance, with form-based arguments depriving investors of mandatory protections." You have been warned.

As part of their commitment to enforcement, the SEC recently filed suit against AriseBank, which claimed to be the first decentralized cryptocurrency bank, alleging it had issued unregistered securities. AriseBank had used social media and celebrity endorsements (Evander Holyfield) to promote an initial coin offering which they claimed raised $600 million. Arise also falsely claimed to have FDIC approval to buy two traditional banks. The court has appointed a partner from Jones Day to act as receiver.

Japanese cryptocurrency exchange Coincheck announced they had been hacked and millions of dollars' worth of cryptocurrency had been stolen. The news prompted a raid by Japanese regulators. Read more here.

The National Institute of Standards and Technology has issued a draft report on the blockchain. It provides a solid overview of the new technology. Looks pretty good. They are taking comments on through Feb. 23, 2018.

Sedona Conference's Data Privacy Primer

The Sedona Conference Working Group on Data Security and Privacy Liability has published a final version of its Data Privacy Primer—a broad overview of the U.S. privacy laws and regulations. After establishing a thoughtful foundation of the historical legal approach to privacy, the Primer provides high-level overviews of the different sectoral laws, including those that impact the financial and healthcare industries, as well as laws that impact education, workplace privacy, and general consumer protection.

Featured Panelist at eBay's Global Summit of Legal Professionals

Sarah Jane Hughes will be a featured panelist at the Global Summit of eBay's legal professionals to be held in Monterrey, CA on February 27-March 1. Virtual currencies, global efforts to regulate providers of related services, and more are on the menu for the panel. The Summit is held annually for all professional employees of eBay's Office of General Counsel. SJH says she's "entirely flattered to be invited for 2018."

Searches of Electronic Devices at Borders

Sarah Jane Hughes hopes that any CLC members travelling to the meeting in Vancouver in February will have read and digested both a January 4, 2018 updated version of the U.S. Customs and Border Protection document on searches of all types of electronic devices at borders, No. 3440-049A, and the ABA's ethics opinion dated January 10, 2018 responsive to it.
Call for Future Contributions

Do you have something that might make a good contribution to next month's Cyberspace Law newsletter? Email Tom Kierner with your blurb! Have a longer or less Cyberspace-y contribution? It might be a good fit for Business Law Today. Email Juliet Moringiello and she will help you with the submission process.